

V. THE MFS PROPOSAL FOR REPRICING INTERSTATE COMMON LINE ELEMENTS IS FLAWED.

MFS proposes that the LECs be allowed to recover their interstate End User Common Line (EUCL) charges from competitors that use unbundled loops in the same manner as it does from end users using similar facilities.⁶³ MFS also suggests that the LECs should be prohibited from collecting Carrier Common Line (CCL) charges with respect to the minutes-of-use originating or terminating on unbundled common lines. These proposals, however, are flawed and are designed to shift a portion of the cost of unbundled loop facilities used by LEC competitors to LEC customers.

As MFS knows, interstate loop costs are recovered through EUCLs and CCL charges. The sum of these charges were established to recover the interstate cost of loop facilities. MFS proposes that it only pay EUCL charges which it would pass on to its customers. If MFS were to pay only the EUCL charge, LECs would not be recovering their costs. The FCC has recently recognized this fact by allowing Rochester Telephone Corporation to charge a flat rate CCL plus EUCL to companies reselling their local service.

At a minimum, this type of approach would be necessary. However, a more reasonable proposal is to increase EUCL charges to a level that recovers the full nontraffic sensitive interstate allocated cost of loop facilities. By doing so, coupled with extensive loop rate deaveraging, no class of customer is unfairly burdened and no provider is granted an unearned regulatory sanctioned cost advantage. If unbundling is mandated, this

⁶³ MFS Petition at p. 43.

proposal should be adopted, and the proposed MFS method of giving itself an unfair advantage should be soundly rejected.

VI. MFS' PROPOSED PRICING STANDARDS FOR STATE TARIFFS MUST BE REJECTED.

A. The Recommended Use of TSLRIC Should be Rejected.

MFS recommends the use of so-called "Total Service Long Run Incremental Costs" (TSLRIC) as the cost standard for establishing "cost-based prices."⁶⁴ This proposal should be rejected for at least seven reasons.

First, "TSLRIC" is not a term of art in economics, managerial accounting or any other discipline. Incremental cost or marginal cost has economic meaning as the prospective valuation of the resources caused to be used up because of the provision of a service or an increase in the quantity of a service. However, the phrase "TSLRIC" appears to have originated with MCI and its consultants and has, over the past few years, been adopted by other intervenors, such as MFS, in hearings before state public utility commissions. The adoption of the term "TSLRIC" by MFS does nothing to create an academic foundation for the term.

Second, to the extent that "TSLRIC" may have meaning, it must apply to services and not network functions or network elements. However, MFS appears to suggest that the costs of network components, such as loops, be calculated. This contradicts the very notion and terminology MFS has proposed: a total service cost.

⁶⁴ MFS Petition at p. 45.

Third, MFS is proposing "TSLRIC" as a "target price and cap for unbundled loops."⁶⁵ This proposal lies in sharp contrast to the standard interpretation of incremental cost as the lower bound for pricing a service. Any multiservice firm, and especially a firm using network facilities, incurs substantial fixed, shared, joint and common costs which must be recovered through the prices of some or all services offered by the firm. MFS has exactly reversed the economic foundation of incremental costs by suggesting that they represent the cap for a price, instead of the price floor.

Fourth, MFS' notion of "TSLRIC" may be based on an unrealistic textbook notion of the long run which can not reflect the costs of real networks. The textbook concept of long-run requires that all of the factors of production can be readily varied, i.e., that sunk costs do not exist. Unfortunately, in real networks, facilities once placed are likely to become largely sunk. In particular, the LEC's franchise obligation to stand ready to serve all customers in a timely manner leads to LEC investments in facilities long before customers or potential customers even order service. These investments largely cannot be modified or reduced if customers do not materialize and order service. The textbook notion of the long-run does not apply to LECs facing a franchise obligation to serve all customers in a timely fashion. Also, there is no consensus in the economics literature as to whether a textbook long-run or short-run standard is appropriate. The

⁶⁵ MFS Petition at p. 45.

preponderance of the economic literature supports the use of short-run marginal costs for pricing.⁶⁶

As a practical matter, the long-run/short-run distinction is perhaps only useful in instructing undergraduate economics students in understanding that different processes and different decisions have different costs; it is practically useless and misleading for policy purposes.⁶⁷ Some decisions (such as a new

⁶⁶ See Ray Rees, Public Enterprise Economics (2d ed. 1976); Roland Andersson & Mats Bohman, Short- and Long-Run Marginal Cost Pricing: On Their Alleged Equivalence, 7 Energy Econ. 279 (1985); Gardner Brown, Jr. & M. Bruce Johnson, Public Utility Pricing and Output Under Risk, 59 Am. Econ. Rev. 119 (1969); John Craven, Peak-Load Pricing and Short-Run Marginal Cost, 95 Econ. J. 778 (1985); Jules Dupuit, On the Measurement of the Utility of Public Works, 8 Annales des Ponts et Chaussees 255, 261 (2d. ser. 1844), reprinted in Readings in Welfare Economics 255 (Kenneth J. Arrow & Tibor Scitowsky eds., 1969); Ian S. Jones, Distortions in Electricity Pricing in the UK: A Comment, 47 Oxford Bull. Econ. & Stat. 275 (1985); William Vickrey, Efficient Pricing of Electric Power Service: Some Innovative Solutions, 14 Resources & Energy 157 (1992); Oliver E. Williamson, Peak-Load Pricing and Optimal Capacity Under Indivisibility Constraints, 56 Am. Econ. Rev. 810 (1966). See also Lester D. Taylor, Pricing of Telecommunications Services: Comment on Gabel and Kennet, 8 Rev. Indus. Organization 15, 16 (1993); and William E. Taylor, Efficient Pricing of Telecommunications Services: The State of the Debate, 8 Rev. Indus. Organization 21, 23 (1993).

⁶⁷ See e.g., James C. Bonbright et al., Principles of Public Utility Rates 661 (2d ed. 1988); John T. Wenders, The Economics of Telecommunications: Theory and Policy 204 (1987); Armen A. Alchian, Costs and Outputs, in The Allocation of Economic Resources (Moses Abramovitz ed., 1959), reprinted in Readings in Microeconomics 159, 166 n.7 (William Breit & Harold M. Hochman eds., 2d ed. 1968); Armen A. Alchian, Cost, in 3 International Encyclopedia of the Social Sciences 404, 410 (1969); William J. Baumol et al., The Role of Cost in the Minimum Pricing of Railroad Services, 35, J. Bus. 357, 359, 361 (1962); Louis De Alessi, The Short Run Revisited, 57 Am. Econ. Rev. 450 (1967), reprinted in Readings in Microeconomics 149, 157 (William Breit & Harold M. Hochman eds., 2d ed. 1968); James Earley, Marginal Policies of "Excellentlly Managed" Companies, 46 Am. Econ. Rev. 44, 66 (1956); Peter Lewin & Steve G. Parsons, Long Run Versus Short Run Costs of Electric Power Interruptions: A Cautionary Note, 7 Energy J. 181 (1986); Lionel Robbins, Remarks Upon Certain Aspects of The Theory of Costs, 44 Econ. J. 1, 17 (1934); and Wesley J. Yordon, Evidence

entry decision) can be fairly characterized as long-run decisions, some (such as pricing with existing unused capacity) can be fairly characterized as short-run, while others fall somewhere in between. Any sound cost calculation properly reflects all the costs that are caused by the decision in question and only those costs regardless of the time period over which the costs are caused. However, the MFS proposal would appear to force an adherence to a textbook notion of the long-run, even when inappropriate.

Fifth, the MFS notion of "TSLRIC" would improperly mix and confuse the concepts of volume sensitive and volume insensitive costs. It has become increasingly common for local exchange companies to separately identify the volume sensitive ("variable" in traditional economic parlance) costs and service-specific volume insensitive or nonvolume sensitive (traditionally referred to as "fixed") costs. Volume insensitive costs, such as advertising, product management and service specific research and development are unaffected by the volume or quantity of the service which is sold. However, the TSLRIC notion would require a single cost calculation which improperly sums volume sensitive and volume insensitive costs. Such a calculation could violate the simple economic principles of dealing with volume insensitive costs. Clearly these costs must be recovered through the total revenues obtained due to the provision of the service, but they cannot be spread simply (and in fact arbitrarily) over the units of service.

No unit should be priced below its incremental unit cost

Against Diminishing Returns in Manufacturing and Comments on Short-Run Models of Price-Output Behavior, 9 J. Post Keynesian Econ. 593 (1987).

or marginal cost; however, service specific volume insensitive costs can be recovered in many different and economically acceptable ways (for instance different prices across customer groups, over time, or a nonrecurring or recurring charge). TSLRIC notions implicitly dismiss these ways of recovering volume-insensitive costs out of hand, by encouraging uniform prices even when costs are not uniform. Economics indicates that nonuniform prices are often superior to uniform prices (as would be required by some building block proposals) with respect to economic efficiency.⁶⁸ This has serious implications for the pricing of services. For example, volume discounts would be precluded due to such a TSLRIC requirement that uniform prices be set even when costs are not uniform. Similarly, prices set on an individual customer basis, may not satisfy the TSLRIC requirement even when such offerings would improve economic efficiency and consumer welfare.

Sixth, TSLRIC cannot be used as a target for prices or as a cap for prices because this ignores the historical expenditures the LECs made in order to satisfy their franchise obligations. LECs have a responsibility to provide basic local exchange service to all customers within their franchise territory, on a timely basis. In order to satisfy this obligation, LECs place facilities well in advance of actual customer demand. Also, the LECs must place substantial facilities in high cost areas, often with little

⁶⁸ See, e.g., David L. Kaserman & John W. Mayo, Cross-Subsidies in Telecommunications: Roadblocks on the Road to More Intelligent Telephone Pricing, 11 Yale J. on Reg. 119, 124-26 (1994); and Louis Philips, The Economics of Price Discrimination 183 (1983).

revenue potential. In contrast, companies like MFS can pick and choose where they place facilities and can contract with customers even before facilities are constructed. They will pick locations where potential revenues are high and costs are relatively low. The historical expenditures of the LECs to satisfy their franchise obligation makes them especially vulnerable to the cream skimming entry of companies like MFS. In the vast majority of cases, the LECs' historical investments have been depreciated at a very slow pace in order to help keep the basic local exchange rates of the past relatively low. However, the large outstanding undepreciated historical investments on the books of the LECs leave them vulnerable to any change in the regulatory covenant and the franchise which created the investments in the first place.

Finally, MFS' so-called "TSLRIC" cost proposal may be a disguise to create a fully distributed cost regime. MFS proposes to "establish appropriate cost allocation and separations rules that can be incorporated into the cost studies."⁶⁹ An "allocation" of costs and "separations rules" clearly suggests a fully allocated or fully distributed cost (FDC) approach. FDC or fully allocated costs allocate or distribute the shared (joint and common) costs of a multiproduct firm to the individual products or services of the firm and often to individual units of the products.⁷⁰ From a

⁶⁹ Id. at 46.

⁷⁰ "Shared," "joint" and "common" costs will be used generically here to refer to those costs related to the operation of facilities that are involved in the production of multiple products or services and which cannot be attributed directly to any single product or service. Often in economics "joint costs" refers to costs occurring in production in fixed proportions. See, e.g., 1 Alfred E. Kahn, The Economics of Regulation 79 (2d ed. 1988).

decision perspective, shared costs are those which are unaffected by any decision relating to an individual product (such as pricing or exit). As such, any fully distributed "cost" calculation is necessarily meaningless in the relevant decision context.

FDC has been dismissed by mainstream economics and the literature on predatory pricing for years and there is a virtual absence of FDC-supporting work in the economics literature, and in fact, most of the literature on the subject condemns it.⁷¹ Fully distributed costs have no theoretical foundation, are necessarily arbitrary and cannot be used in any meaningful way to establish prices, or set upper or lower bounds for pricing; they are useless for establishing a standard for cross-subsidy or anticompetitive practices. More to the point, they are useless as the sole basis of interconnection rates.

A fundamental disadvantage of FDC approaches used to force the establishment of a price, a price cap, or a price floor, is that FDC approaches are based on historical costs. Any sound

⁷¹ See e.g., In re Coal Rates Guidelines Nationwide, 1 I.C.C.2d 520 (1985); William J. Baumol, Superfairness 134-136 (1986); James C. Bonbright et al., Principles of Public Utility Rates 481 (2d ed. 1988); Walter B. McFarland, Concepts For Management Accounting 46 (1966); Milton Spencer et al., Managerial Economics: Text, Problems, and Short Cases 367 (4th ed. 1975); Arthur L. Thomas, The Allocation Problem: Part Two 156-57 (1974); John T. Wenders, The Economics of Telecommunications: Theory and Policy 174 (1987); William J. Baumol et al., How Arbitrary is 'Arbitrary'?—or, Toward the Deserved Demise of Full Cost Allocation, Pub. Util. Fort., Sept. 3, 1987, at 16; William J. Baumol et al., The Role of Cost in the Minimum Pricing of Railroad Services, 35 J. Bus. 357 (1962); Ronald Braeutigam, An Analysis of Fully Distributed Cost Pricing in Regulated Industries, 11 Bell J. Econ. 182 (1980); George Sweeney, Welfare Implications of Fully Distributed Cost Pricing Applied to Partially Regulated Firms, 13 Bell J. Econ. 525 (1982); See generally Ray H. Garrison, Managerial Accounting: Concepts for Planning, Control, Decision Making 594-96 (5th ed. 1988).

cost calculation corresponds to a particular business decision; as such, costs reflect the resources that must be sacrificed today and into the future because of that decision and consequent actions. From an economic perspective, all of the consequences of any action are current and future consequences, hence cost only makes sense as a concept if it is forward-looking.⁷²

B. The MFS Notion of Pricing Below Incremental Cost for Mitigating Circumstances Should be Rejected.

MFS recommends that certain mitigating circumstances "would justify a lower than TSLRIC price for unbundled loops."⁷³ Economics, business and sound public policy principles all identify incremental cost as the lower bound for pricing a service. Economic efficiency, avoiding cross-subsidies and avoiding predatory pricing all require that prices over the long run cover incremental costs. These principles cannot be violated simply because MFS would like to purchase certain unbundled loops from the LECs if they were offered at prices below their costs.

Certainly, because of the many problems with the TSLRIC notion advanced by MFS, TSLRIC may overstate an appropriate measure

⁷² See Robert N. Anthony, Management Accounting: Text and Cases, 584 (4th ed., 1970); Dennis W. Carlton & Jeffrey M. Perloff, Modern Industrial Organization, 32 (1990); Paul Heyne, The Economic Way of Thinking 96 (5th ed., 1987); Thomas T. Nagle, The Strategy and Tactics of Pricing: A Guide to Profitable Decision Making, 15 (1987); Arthur A. Thompson, Jr. & John P. Formby, Economics of the Firm: Theory and Practice, 197 (6th ed., 1993); Milton H. Spencer, K. K. Seo and Mark G. Simkin, Managerial Economics Text, Problems, and Short Cases, 230 (4th ed., 1975); John T. Wenders, The Economics of Telecommunications: Theory and Policy, 238 (1987); R. H. Coase, Business Organization and the Accountant, in L.S.E. Essays on Cost, 109 (J. M. Buchanan & G. F. Thirlby ed., 1981); and R. S. Edwards, The Rational of Cost Accounting, in L.S.E. Essays on Cost, 89 (J. M. Buchanan & G. F. Thirlby ed., 1981).

⁷³ MFS Petition at p. 46.

of incremental costs in some circumstances. Therefore, some prices might appropriately be set below the MFS notion of TSLRIC. However, this would only occur simply because TSLRIC is often invalid as a cost measure and not because of the "mitigating" circumstances listed by MFS.

If any circumstance is genuinely "mitigating" with regard to any decision to force the unbundling of local loops of the LECs for the convenience of entrants such as MFS, it is the traditional franchise obligation of the LEC to place facilities in high cost areas in order to serve all customers on a timely basis. Another factor which may be "mitigating" is the RBOC's inability to manufacture equipment, provide information services or provide interLATA service.

C. The MFS Recommendation For An Imputation Standard Should Be Rejected.

First, MFS is attempting to coin a new term and a corresponding new notion: "reverse imputation." This notion requires "the sum of the prices of the unbundled rate elements is no greater than the price of the bundled exchange access line and (2) the ratio of price to cost for each element and the bundled exchange access line is the same."⁷⁴ As discussed earlier, such a notion has no foundation. It is hard to imagine an auto dealer which would sell each of the individual components to a car at prices which would only sum to the total price of the car. There probably is not a single multiproduct or multiservice firm in any

⁷⁴ MFS Petition at p. 47-48.

competitive industry in the United States which could pass such a test.

Second, any proper imputation standard is wasteful of resources since, at best, it only replicates the incentives of the LEC.⁷⁵ No firm has an incentive to price its final service to end users so low as to lose greater profits or contribution from the sale of its intermediate or wholesale services.

Third, the so-called "inverse imputation" standard proposed by MFS does not allow for any economies by the LECs in the provision of intermediate/wholesale services or functions to themselves. In particular, since MFS does not face the same franchise obligation to serve all customers within a broad geographic area, the LECs will have a lower cost in the provision of the loop facilities which MFS chooses not to purchase from the LECs. MFS has the opportunity to construct distribution facilities in geographic areas or niches or market segments in which revenues are relatively high and costs are relatively low. Similarly, MFS will choose to lease loop facilities from the LECs in instances in

⁷⁵ See Alexander C. Larson & Steve G. Parsons, Imputation Policies and Competition in Telecommunications, 16 Hastings Comm/ent L.J. 1, 3 n.4 (1993). Proper imputation requires that the incremental cost of the downstream service be added to any foregone contribution from the lost sale of the input. See Alexander C. Larson & Steve G. Parsons, An Economic Analysis of Transfer Pricing and Imputation Policies for Public Utilities, in Incentive Regulation for Public Utilities 65 (M. A. Crew ed. 1994); William J. Baumol & J. Gregory Sidak, Toward Competition in Local Telephony 94, 95-97 (1994); William J. Baumol & J. Gregory Sidak, The Pricing of Inputs Sold to Competitors, 11 Yale J. on Reg. 171 (1994); Timothy J. Tardiff & William E. Taylor, Pricing the Competitive Services of Local Telephone Companies (May 1991) (unpublished manuscript, National Economic Research Associates, Working Paper #7); and Mohamed Onsi, A Transfer Pricing System Based on Opportunity Cost, 45 Acct. Rev. 535 (1970).

which the costs are relatively high. By definition, the facilities which MFS will choose to lease will be high cost facilities. To force a LEC to impute the price it would charge MFS for a loop, into the cost of its own local service, forces the LECs to work under a competitive disadvantage. This would compound the problems caused by allowing cream-skimming entry to exist.

VII. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission reject the MFS Petition and expediently act upon the access reform petitions that are within the proper jurisdiction of the FCC.

Respectfully submitted,

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April 10, 1995

DOCKET NO. 13282

APPLICATION OF MFS INTELENET OF §	PUBLIC UTILITY COMMISSION
TEXAS, INC. FOR CERTIFICATE OF §	
CONVENIENCE AND NECESSITY TO §	OF TEXAS
OPERATE AS A LOCAL EXCHANGE §	
COMPANY IN THE AREAS SERVED BY §	
SOUTHWESTERN BELL TELEPHONE §	
COMPANY AND GTE SOUTHWEST, §	
INC. IN HARRIS, DALLAS, COLLIN, §	
TARRANT, BEXAR, TRAVIS, AND EL §	
PASO COUNTIES §	

COMMENTS OF MFS INTELENET OF TEXAS, INC.
ON OFFICE OF PUBLIC UTILITY COUNSEL'S MOTION FOR
CLARIFICATION OF ORDER NOS. 15 AND 20

Applicant, MFS Intelenet of Texas, Inc. ("MFSI-TX"), by its undersigned counsel, hereby submits the following comments on the Office of Public Counsel's ("OPUC's") Motion for Clarification of Order Nos. 15 and 20, which was received by MFSI-TX on Monday, January 9, 1995.

I.

OPUC's Motion is based upon Order No. 15 in this docket, in which the ALJ severed the issue of loop unbundling from this docket for consideration in separate rulemakings; and Order No. 20, in which the ALJ granted (unopposed) motions to strike certain portions of MFSI-TX's testimony relating to loop unbundling on the ground that the issue of loop unbundling was no longer within the scope of this docket. OPUC asserts that it has become "apparent that the ALJ has excluded not only unbundling issues, but issues relating to the resale and sharing of facilities." (Motion at 2.) It states that "the parties must be allowed to introduce evidence regarding how [MFSI-TX's] service will be transmitted and distributed to customers."

(*Id.*) It expresses concern that, if resale has been excluded from this proceeding, the only permissible method of transmission and distribution will be over the Applicant's own facilities, thereby preventing any non-facilities-based provider of local exchange service from obtaining certification under current law. (*Id.* at 2-3, 5.)

OPUC requests that the ALJ issue an order allowing issues of resale/sharing of facilities (either bundled or unbundled, or alternatively bundled only) to be addressed in this proceeding; allow MFSI-TX to address how it will serve customers who cannot currently be served by MFSI-TX owned or affiliated facilities; and (apparently) extend the procedural schedule so that additional testimony may be adduced and discovery conducted on this issue. (*Id.* at 6-8.)

II.

MFSI-TX does not join in OPUC's interpretation of Order Nos. 15 and 20. No clarification of those Orders is necessary, other than to dispel any confusion created by the instant Motion; and no additional testimony or extension of the procedural schedule is required.

In MFSI-TX's view, Order No. 15 meant simply what it said: the issue of *loop unbundling* was severed from the docket; all other issues raised by the Application remain relevant to this docket. The only reasonable interpretation is that when the Order refers to "unbundling," it does so in the same sense used in MFSI-TX's Application and testimony. That is, it refers to MFSI-TX's request that Southwestern Bell Telephone Company ("SWBT") and GTE Southwest Incorporated ("GTE") be required to make available individual components of basic local exchange service for use by competing certificated carriers on a disaggregated or unbundled basis. This request would have required SWBT and GTE to establish new tariffed rate elements for network functions that, today, do not exist as separately identified services in

their tariffs, namely simple local exchange links (Direct Testimony of Susan DeFlorio ("DeFlorio Test.") at 58, lines 4-6 [stricken]), and unbundled subelements of Digital Loop Carrier systems (*id.* at 60, lines 7-18 [stricken]).

Order No. 15 precludes MFSI-TX from requesting, or basing its case in support of certification on, the availability of new unbundled services that SWBT or GTE would be required to offer. It does not, however, prevent MFSI-TX from basing its case upon the purchase and resale of *existing* SWBT or GTE tariffed services (whether bundled or unbundled) to the extent that resale and sharing of those services is authorized under current Commission rules and currently effective LEC tariffs; nor prevent any other party from introducing any otherwise relevant evidence relating to MFSI-TX's proposed resale or sharing of these or other existing tariffed services as part of its case. The ALJ's reasons for severing the unbundling issue, as stated in Order No. 15, were based primarily on the "complexity and time involved to unbundle the local loop" and the fact that other proceedings were available for this purpose. Order No. 15, p. 8. That reasoning plainly does not apply to resale/sharing of services that are already available in Bell's or GTE's tariffs.

III.

OPUC's Motion is based entirely on its mistaken assumption that the ALJ has stricken all testimony relating to MFSI-TX's ability to resell SWBT and/or GTE transmission services in order to meet its certification obligations. As shown below, only that portion of the testimony relating to resale of *unbundled link* facilities was stricken; other testimony remains in the record which addresses OPUC's concerns.

OPUC explained the basis for its Motion as follows:

The manner in which a non-facilities based or a partial-facilities based provider can provide service, including terms and conditions, is a critical issue that must be determined in this docket. MFSI-TX is requesting a CCN to provide service. Thus, the parties must be allowed to introduce evidence regarding how the service will be transmitted and distributed to customers. If parties are restrained from examining how a non-facilities based or partial-facilities based provider can provide service, then the Commission will be unable to make required findings.

(Motion at 2.) MFSI-TX agrees with all of the above-quoted statements; but as explained above it does not agree that either Order No. 15 or Order No. 20 restrains the parties in any way from presenting evidence relevant to the issues described by OPUC.

In principle, MFSI-TX has two possible methods of transmitting and distributing its services to customers. First, it can build its own transmission and distribution facilities terminating at each customer's premises. However, the evidence shows that it does not intend to do so. (DeFlorio Test. at 10-12.) Second, it can purchase transmission service from, or lease capacity on the facilities of, other entities. Those other entities could be (a) MFSI-TX's own affiliates which already operate fiber optic networks in Houston and Dallas (DeFlorio Test., p. 11, lines 13-19; p. 12, lines 6-8 and 14-15; and p. 18, lines 6-8); (b) the incumbent LECs; or (c) any other dominant or non-dominant carriers that have suitable communications facilities in place. In reality, of course, neither MFSI-TX's affiliates nor any other entity besides SWBT and GTE has suitable facilities in existence to every residential and business premise within MFSI-TX's proposed service area, so it will be a practical necessity to use SWBT and GTE services to serve at least some customers.

MFSI-TX's intention to use SWBT and GTE transmission services is plainly stated in several portions of its direct testimony (DeFlorio Test., p. 12, lines 15-17; p. 18, lines 8-10) which were *not* stricken by Order No. 20. Therefore, contrary to OPUC's assumption,

MFSI-TX has been able to introduce evidence regarding how its services will be transmitted and distributed to customers; and the other parties are not restrained from examining this issue. OPUC's concern that the Commission will be unable to make the required findings on this issue is unjustified.

IV.

Much of the confusion arising from OPUC's Motion stems from its repeated references to "resale/sharing of facilities" as an issue in this case. MFSI-TX has not raised any issues concerning resale or sharing of facilities (or, more precisely, resale or sharing of the incumbent LECs' tariffed services). MFSI-TX has tried to make it abundantly clear in this proceeding that, except for the issue of link unbundling which has now been severed, it was not seeking any changes in the Commission's rules or policies relating to resale and sharing of LEC services. That includes both those policies that allow the LECs to prohibit or restrict resale of some of their services, and those policies that *require* the LECs to permit resale of other services. In particular, Substantive Rule § 23.92(d)(1) requires both SWBT and GTE to file tariff revisions to unbundle special access and private line services and to remove any resale or sharing restrictions for each such service. The ability of MFSI-TX to resell or share private line and special access services is not an issue in this docket, because it has already been decided by the Commission in adopting § 23.92. (Nor is there any issue regarding resale of services other than private line or special access, because MFSI-TX has not expressed any intention to engage in any such resale.)

The fact that MFSI-TX may resell SWBT or GTE special access or private lines as one method of transmitting its services to its customers does not create a "resale issue." Rather, the

ultimate issue in this docket is whether MFSI-TX's proposed services will be consistent with the public interest. In the course of deciding this ultimate issue, the parties may raise a number of subsidiary factual issues relating to such things as MFSI-TX's methods of operation, its network design, its costs, and the technical feasibility of its proposed services. Evidence relating to the private line and special access services of SWBT and GTE that MFSI-TX will resell may possibly be relevant to some or all of these issues. But that does not convert these factual issues into "resale issues" that require some special policy decision by the Commission. Rather, facts relating to the cost, or technical specifications, or locations, or other characteristics of resold private line and special access services are simply facts that may be relevant to Commission determinations about MFSI-TX's services; just as facts relating to the cost, or technical specifications, or locations, or other characteristics of the transmission facilities installed by MFSI-TX's affiliates may be relevant to such determinations. These are certification issues, not "resale issues."

V.

OPUC's remaining assertions are likewise based on an incorrect evaluation of the testimony remaining in the record after Order No. 20. OPUC expresses concern that "the ALJ's determination to exclude the examination of resale/sharing of facilities in this docket and to strike the testimony of MFSI-TX has precluded any non-facilities based provider from becoming a certificated LEC." (Motion at 4.) Since, as shown above, the ALJ has not in fact excluded examination of resale/sharing from this docket, but only resale/sharing of *unbundled link facilities*, OPUC's dire conclusion is not warranted.

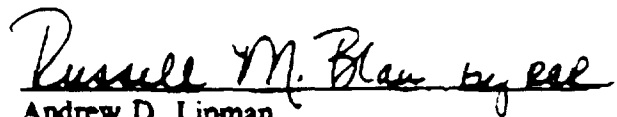
Similarly, on pages 5 and 6 of its Motion, OPUC discusses the need to permit MFSI-TX to present its case about how it will serve residential customers, and for the Commission to answer various questions regarding the protection of residential ratepayer interests. These matters are already within the scope of MFSI-TX's testimony and are open to the other parties to examine through discovery and cross-examination, as well as to present their own evidence on these issues.

VI.

For the foregoing reasons, MFSI-TX believes the clarification sought by OPUC is unnecessary. MFSI-TX specifically opposes the relief requested by OPUC in paragraph (3) on page 7 of the Motion, namely allowing MFSI-TX to amend its testimony to discuss resale/sharing issues and "allow the other parties appropriate time to respond through testimony and cross-examination to the additional information included by MFSI-TX." As demonstrated above, MFSI-TX has already introduced evidence regarding its intention to resell SWBT and GTE services. Other parties (including OPUC) have already conducted discovery on this subject. MFSI-TX sees no need for an extension of the procedural schedule and delay of the hearing.

WHEREFORE, premises considered, MFSI-TX respectfully requests that OPUC's Motion be denied.

Respectfully submitted,



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Dated: January 17, 1994

**MFS INTELENET, INC.
PUBLIC UTILITY COMMISSION OF TEXAS
DOCKET NO. 13282**

REQUEST: Office of Public Utility Counsel

DATE: December 30, 1994

OPC-14 MFSI-TX states in the testimony of Susan DeFlorio that "MFSI-TX requests that two forms of unbundled links be made available. The first is a 'simple' link, which is simply a path for voice-grade service...from an end-user's premises to the central office." (Direct Testimony of Susan DeFlorio, p. 58, ln. 4)

- a. Does MFSI-TX propose to lease "simple" links from other LECs to provide local exchange service to residential and small business customers whose premises are not located on loop facilities owned by MFS affiliates in Texas?
- b. If the response to (a) is no, please explain how MFSI-TX intends to provide local exchange services to residential and small business customers whose premises are not located on loop facilities owned by MFS affiliates in Texas.
- c. If the response to (a) is yes, will the decision in Order No. 15 to sever unbundling issues from Docket No. 13282 prevent MFSI-TX from providing local exchange service to residential and small business customers whose premises are not located on loop facilities owned by MFS affiliates in Texas?
- d. If the response to (c) is no, please explain how MFSI-TX intends to provide local exchange service to residential and small business customers whose premises are not located on loop facilities owned by MFS affiliates in Texas without the ability to lease "simple" links from other LECs.

RESPONSE:

- a. Yes, if and when such links are made available.
- b. Not applicable.
- c. No.

**MFS INTELNET, INC.
PUBLIC UTILITY COMMISSION OF TEXAS
DOCKET NO. 13282**

REQUEST: Office of Public Utility Counsel

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OPC-14 [Continued]

d. MFSI-TX has not determined how it will serve particular end users, and it will not do so until it receives specific requests for services. In general, however, several alternative methods of serving these customers exist. First, MFSI-TX could request that its affiliates expand their current networks to the customers' premises. Second, although there are no current plans to do so, MFSI-TX could construct its own network facilities. Third, and most probably, MFSI-TX would seek to lease facilities from other vendors to connect its switch to an end user's premises. This would include leasing special access and/or private line services from local exchange carriers (if and when private line tariffs are amended to permit resale of such service), as well as subscribing to the network capacity of cable TV systems, other competitive access providers, private networks or other vendors. MFSI-TX has made no investigation of the availability or cost of any of these alternatives, other than tariffed LEC services.

RESPONDENT: Susan DeFlorio, Director, Central Region

Docket No. 13655
TCG's Response to
City of Arlington's 1st RFI
Request No. 2
February 27, 1995

Request No. 2:

TCG-Dallas's application in the instant case states that it presently has facilities in place to provide local exchange service. Provide a list and a map of all such facilities owned, leased, or rented by TCG-Dallas in Tarrant County. "Facilities" should be defined in the broadest sense, including, but not limited to, ~~transmission~~, switches and trunks. Identify whether such facilities are owned by TCG-Dallas, leased, or rented.

Response:

Please see attached map.

Responsible Person: Andrew J. Burke

Docket No. 13655
TCG's Response to
City of Arlington's 1st RFI
Request No. 3
February 27, 1995

Request No. 3:

For each facility identified in #2 above, identify the entity which owns such facility. Furthermore, identify whether each such entity is an affiliate of TCG-Dallas or a non-affiliate.

Response:

A portion of the facilities shown on the map provided in response to Question 2 are owned by the following TCG-Dallas affiliates:

TCI Cablevision of Dallas, Inc.
TCI Cablevision of the Metroplex and
Communications Services, Inc.
TCI Cablevision of North Texas

Responsible Person: Andrew J. Burke